

REMARKS/ARGUMENTS

This is intended to be a full and complete response to the Office Action dated June 17, 2004. In view of the amendments presented above and the following discussion, the Applicants believe that all claims are in allowable form.

Claims 1 and 9 have been amended. Claim 17 has been added. Support for these amendments can be found throughout the specification. Upon entry of this amendment, claims 1, 3-9 and 13-17 will be pending in the application.

Claim objections

Claim 9 is objected to under 35 C.F.R. 1.75 (c) as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicants have amended claim 9 to provide proper dependency. As such, Applicants respectfully request that this objection be withdrawn.

Rejections under 35 U.S.C. §102

Claims 1, 3- 6, and 9 stand rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Pat. No. 5,102,573 to Han et al ("Han")

Applicant's invention as recited in amended claim 1 is directed to "a physically stable shear thinning sprayable gel composition useful for delivering actives to skin comprising:

a clay gelling agent;

water;

at least one water-miscible solvent; and

at least one viscosity stabilizer selected from salts, acids and combinations thereof, wherein an amount of said at least one viscosity stabilizer contained in said composition ranges from about 0.01 percent to about 0.05 percent by weight, based on a total weight of said composition."

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In Applicant's claims 1, 3- 6, and 9, a sprayable gel composition comprises at least one viscosity stabilizer selected from salts, acids and combinations thereof, wherein an amount of said at least one viscosity stabilizer contained in said composition ranges from about 0.01 percent to about 0.05 percent by weight, based on a total weight of said composition.

The criticality of the percentage of salts or acid is clearly recited in the specification, "the tendency of the composition to form a rigid gel can be mitigated by the addition of salts or acid to the compositions. However if the concentration of salt is too high, the clay particles will flocculate, creating clustered particles, which will tend to precipitate out under the influence of gravity." (see the specification at page 9, lines 1-4).

Han describes compositions for removing baked-on food residues (see Han, Abstract). The compositions may contain up to about 10% builder salts (column 4, line 58-63). The preferred amount of the builder salt is 1% (column 4, line 65).

Han does not describe or suggest Applicant's invention as recited in claims 1, 3- 6, and 9 in which a sprayable gel composition comprises at least one viscosity stabilizer selected from salts, acids and combinations thereof, wherein an amount of said at least one viscosity stabilizer contained in said composition ranges from about 0.01 percent to about 0.05 percent by weight, based on a total weight of said composition. Rather, Han only teaches compositions that contain up to about 10% builder salts. Furthermore, the example composition cited by the Examiner (see Han, column 12, lines 6-16) includes 6% tetrapotassium pyrophosphate (i.e., builder salt), which is clearly outside Applicant's claimed range of 0.01 percent to about 0.05 percent. Thus, Applicant's invention as recited in amended claims 1, 3- 6, and 9 is patentable over Han.

Claim 1 stands rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Pat. No. 5,484,816 to Yanagida et al ("Yanagida").

Yanagida describes external skin treatments in which the stability of Vitamin A is improved (see Yanagida, column 1, lines 6-8). The compositions include Vitamin A and at least one stabilizer (column 1, lines 28-56). The stabilizers include chelating agents, water-swellaable clay materials, among numerous others (column 4, line 65). One

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example composition includes water-swellaable clays, citric acid, and various salts (sodium citrate, 2-hydroxy4-methoxybenzophenone-5 sodium sulfonate, and sodium hexametaphosphate) (see column 46, lines 37-52). In this example, the concentration of salt and acid is 0.62%, clearly outside the Applicants claimed range of 0.01 percent to about 0.05 percent.

Yanagida does not describe or suggest Applicant's invention as recited in claim 1 in which a sprayable gel composition comprises at least one viscosity stabilizer selected from salts, acids and combinations thereof, wherein an amount of said at least one viscosity stabilizer contained in said composition ranges from about 0.01 percent to about 0.05 percent by weight, based on a total weight of said composition. Rather, Yanagida only teaches compositions that include water-swellaable clays and various acids and salts that are present in a concentration much higher than the Applicant's claimed range. Thus, Applicant's invention as recited in amended claim 1 is patentable over Yanagida.

Rejections under 35 U.S.C. §103

Claims 3-9, 13, 15 and 16 are rejected under 35 U.S.C. §103(a) as being as being unpatentable over U.S. Pat. No. 5,484,816 to Yanagida et al ("Yanagida"). Applicants submit that claims 3-9, 13, 15 and 16 are not rendered obvious by this reference.

The Examiner applied Yanagida as above. Claims 3-9, 13, 15 and 16 depend from claim 1 and recite various limitations thereto. However, as discussed previously, Yanagida does not describe or suggest Applicant's invention as recited in claim 1 in which a sprayable gel composition comprises at least one viscosity stabilizer selected from salts, acids and combinations thereof, wherein an amount of said at least one viscosity stabilizer contained in said composition ranges from about 0.01 percent to about 0.05 percent by weight, based on a total weight of said composition. Rather, Yanagida only teaches compositions that include water-swellaable clays and various acids and salts that are present in a concentration much higher than the Applicant's claimed range. Thus, Applicant's invention as recited in amended claim 1 is patentable over Yanagida. Accordingly, the Applicants respectfully request that this rejection be withdrawn.

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Claim 14 is rejected under 35 U.S.C. §103(a) as being unpatentable over Yanagida in view of 4,543,251 to Kamishita ("Kamishita"). Applicants submit that claim 14 is not rendered obvious by this combination of references.

The Examiner applied Yanagida as above. However, the Examiner submits that Yanagida does not teach menthol or camphor of the instant claims. As such, the Examiner cites Kamishita for such teachings.

Kamishita teaches gel preparations prepared from diclofenac sodium. L-menthol may be added to impart a cool feeling to the skin (col. 3, lines 40-45).

Kamishita does not describe or suggest Applicant's invention as recited in claim 1 in which a sprayable gel composition comprises at least one viscosity stabilizer selected from salts, acids and combinations thereof, wherein an amount of said at least one viscosity stabilizer contained in said composition ranges from about 0.01 percent to about 0.05 percent by weight, based on a total weight of said composition. Rather, Kamishita only teaches using l-menthol to impart a cool feeling to the skin. Thus, Applicant's invention as recited in amended claim 1 is patentable over Kamishita. Furthermore, since Yanagida only teaches compositions that include water-swelling clays and various acids and salts that are present in a concentration much higher than the Applicant's claimed range and Kamishita only teaches using l-menthol to impart a cool feeling to the skin, the combination of these references does not teach Applicant's invention. Thus, Applicants invention, as recited in claim 14 is patentable over this combination of references. Accordingly, the Applicants respectfully request that this rejection be withdrawn.

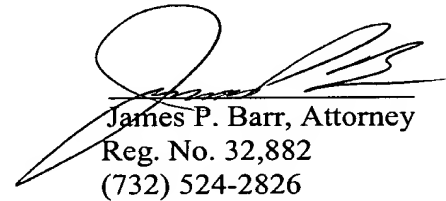
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Conclusion

The applicants submit that none of the claims, presently in the application, is anticipated under the provisions of 35 U. S. C. § 102. Consequently, the applicants believe that all of the claims are presently in condition for allowance. Accordingly, both reconsideration of this application and its swift passage to issue are earnestly solicited.

If, however, the Examiner believes that there are any unresolved issues requiring adverse final action in any of the claims now pending in the application, it is requested that the Examiner telephone Mr. James P. Barr, at (732) 524-2826, so that appropriate arrangements can be made for resolving such issues as expeditiously as possible.

Respectfully submitted,



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